

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHNNY REED,

No. C 08-5292 MHP (pr)

Petitioner,

**ORDER TO STAY PROCEEDINGS  
AND ADMINISTRATIVELY CLOSE  
CASE**

v.

M. A. ARNOLD,

Respondent.

Petitioner filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge his 2005 Alameda County Superior Court conviction. In addition to his petition, petitioner also moved for a stay and abeyance of this action and for leave to proceed in forma pauperis.

The motion for a stay and abeyance and the habeas petition indicate that petitioner's conviction was affirmed, that his petition for review was denied on November 14, 2007, that he had wanted to file a state habeas petition to assert claims 5, 6, 7, and 8 from his federal petition that had not yet been presented those to a state court. He also stated that those claims were not plainly meritless and that he was not engaging in intentional delay by requesting a stay. Liberally construed, the pro se motion satisfies the criteria for permitting a stay identified in Rhines v. Weber, 544 U.S. 269, 277-78 (2005). The motion for a stay and to hold these proceedings in abeyance is GRANTED. (Docket # 3.)

This action is now STAYED and the clerk shall ADMINISTRATIVELY CLOSE the action. Nothing further will take place in this action until petitioner exhausts the

1 unexhausted claims and, within thirty days of doing so, moves to reopen this action, lift the  
2 court's stay and proceed with consideration of his habeas petition. When he finishes in state  
3 court and moves to reopen, petitioner must clearly identify each claim that has been  
4 exhausted in state court.

5 Petitioner must act diligently to get his state court petition filed and promptly return to  
6 federal court after his state court proceedings have concluded. If petitioner does not return  
7 within thirty days of exhausting the unexhausted claim, the action or the unexhausted claims  
8 may be dismissed. See id.; Kelly v. Small, 315 F.3d 1063, 1071 (9th Cir.), cert. denied, 538  
9 U.S. 1042 (2003). Petitioner also must exercise continuous diligence during the exhaustion  
10 process in the state courts. Imposing these time limits for petitioner to expeditiously get to,  
11 through, and back from state court furthers the AEDPA's goals of encouraging finality of  
12 judgments and streamlining federal habeas proceedings. See Rhines, 544 U.S. at 278.

13 Petitioner's motion to proceed in forma pauperis is GRANTED. (Docket # 5.)

14 IT IS SO ORDERED.

15 DATED: March 17, 2009

  
Marilyn Hall Patel  
United States District Judge